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Attorneys for Defendant

WESTERN DENTAL SERVICES, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM BORBON and MARIA BORBON,

Plaintiffs,

v.

WESTERN DENTAL SERVICES, INC. and  
DOES 1 through 10, inclusive,

Defendant.

Case No. **'13CV0021 CAB KSC**

**DEFENDANT'S NOTICE OF  
REMOVAL**

**[28 U.S.C. § 1446(b)]**

[San Diego County Superior Court Case  
No. 37-2012-00058227]

PLEASE TAKE NOTICE that Defendant Western Dental Services, Inc. ("WDS") hereby removes this action from the Superior Court of California, County of San Diego to the United States District Court for the Southern District of California pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

## Procedural History and Timeliness of Removal

1. On October 30, 2012, Plaintiffs William and Maria Borbon filed a civil action in San Diego County Superior Court entitled *William Borbon, et al. v. Western Dental Services, Inc., et al.*, Case No. 37-2012-0058227. (*See* Exhibit A, attached hereto.)

2. The Complaint asserts a claim under the Telephone Consumer Protection Act, (“TCPA”) 47 U.S.C. § 227 *et seq.*, as well as various state-law causes of action under California’s Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788 *et seq.*, and state common law claims.

3. The Complaint was served on Defendant Western Dental Services, Inc. (“WDS”) on December 10, 2012.

4. Defendant’s removal notice is timely. *See* 28 U.S.C. § 1446(b)(1) (removal is timely if filed within 30 days of defendant’s receipt of a copy of the initial pleading).

## Venue

5. Defendant filed this Notice of Removal with the United States District Court for the Southern District of California because Plaintiffs filed the original action in the Superior Court of California, County of San Diego. (Ex. A.)

## Basis for Removal Jurisdiction

6. The action is removable pursuant to 28 U.S.C. §§ 1331 and 1441(c).

7. Plaintiffs purport to state a claim against Defendant arising under the TCPA (*see* 47 U.S.C. § 227 *et seq.*).

8. Removal is therefore proper pursuant to 28 U.S.C. §§ 1331 and 1441(c). *See Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012) (holding federal courts have jurisdiction over TCPA claims under 28 U.S.C. § 1331).

9. The Court has supplemental jurisdiction over the state law claims because “they form part of the same case or controversy” as the TCPA claim. 28 U.S.C. § 1367(a).

10. In addition, the Court also has jurisdiction over Plaintiffs’ state law claims that “necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state

1 judicial responsibilities.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S.  
 2 308, 314 (2005). Plaintiffs’ RFDCPA claims necessarily raise substantial and disputed federal  
 3 issues that justify removal under 28 U.S.C. § 1441.

4 11. The RFDCPA incorporates “nearly all the provisions of the Federal Fair Debt  
 5 Collection Practices Act.” (Ex. A at ¶ 3.) The majority of plaintiffs’ RFDCPA claims  
 6 exclusively rely upon alleged violations of rights established under federal law: the federal Fair  
 7 Debt Collection Practices Act, 15 U.S.C. sections 1692c(a)(1), 1692c(a)(2), 1692c(c), and  
 8 1692d(5). A necessary and substantial element of each of these claims is whether Defendant  
 9 violated governing federal law. Given the significant federal interests in resolving claims under  
 10 the Federal FDCPA, and California’s incorporation of federal law in California’s RFDCPA, the  
 11 exercise of federal jurisdiction in this case does not disturb any congressionally approved balance  
 12 of federal and state judicial responsibilities.

### 13 **Consent and Joinder**

14 12. No consent is necessary as to remaining defendants Does 1 through 10 because  
 15 such defendants have not yet been served. *Salveson v. Western States Bankcard Ass’n*, 731 F.2d  
 16 1423, 1429 (9th Cir. 1984) (“a party not served need not be joined” in a petition for removal).

### 17 **Notice to State Court**

18 13. A copy of this Notice of Removal is being filed with the Clerk of the Superior  
 19 Court for the County of San Diego.

20 Accordingly, Defendant respectfully submits that this action is removed properly pursuant  
 21 to 28 U.S.C. §§ 1331 and 1441(c).

22 Dated: January 4, 2013

DAN MARMALEFSKY  
 TIFFANY CHEUNG  
 MORRISON & FOERSTER LLP

25 By: /s/ Tiffany Cheung

Tiffany Cheung

26 Attorneys for Defendant Western  
 27 Dental Services, Inc.

**CERTIFICATE OF SERVICE BY MAIL**  
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**DEFENDANT'S NOTICE OF REMOVAL**

**EXHIBIT A TO NOTICE OF REMOVAL**

**CIVIL COVER SHEET**

**DEFENDANT WESTERN DENTAL SERVICES' NOTICE  
OF PARTY WITH FINANCIAL INTEREST**

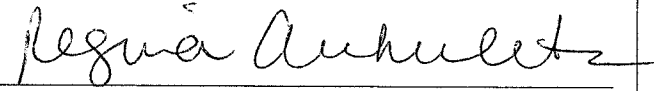
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practices:

Karen S. Spicker  
Doan Law Firm, LLP  
2850 Pio Pico Drive, Suite D  
Carlsbad, CA 92008  
Telephone: (760) 450-3333

I declare under penalty of perjury that the above is true and correct.

Executed at San Francisco, California, this 4<sup>th</sup> day of January, 2013.

Regina C. Archuleta-Rodriguez  
(typed)

  
(signature)